

**Office of the
Attorney General**

Idaho

Recorder's Law Manual



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PREFACE

The purpose of this manual is to serve as a reference resource and manual for personnel working in the recorder's office. The manual is somewhat basic in its explanations and is intended to give the reader the Idaho Code sections that should be carefully reviewed to determine the specific answer to a recording question. This manual is not intended to be a substitute for legal advice from the local prosecuting attorney's office or the office of the Idaho Attorney General.

APPRECIATION

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Idaho Recorder's Law Manual

I. OFFICE OF THE "RECORDER"

A. County Officer

1. "Idaho Constitution"

The existence of a county recorder can be found in the original Idaho Constitution adopted in 1890. Art. 18, § 6, entitled "County Officers," provides that the clerk of the district court shall be the "recorder." The election of a county "clerk of the district court" is provided for in Art. 5, § 16 of the Idaho Constitution dealing with the subject of the "Judicial Department." While it is clear that the "clerk of the district court" is a constitutional elected officer, the function of "recorder" goes unexplained in the Idaho Constitution. Art. 18, § 6, does provide that the recorder "shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their office may require."

2. "Idaho Code"

Idaho Code § 31-2001 describes the officers of a county as including the clerk of the district court as the "recorder." Idaho Code § 31-3107 repeats the language of the Idaho Constitution concerning the ability of the county commissioners to appoint deputies and clerical assistants. Idaho Code § 31-2003 further states that every county officer may appoint as many deputies as may be necessary for the prompt and faithful discharge of the duties of his office. However, the Idaho Code is similar to the Idaho Constitution in failing to define the term "recorder" or the specific nature of the duties of the position. Presumably, the Idaho Legislature believed that the term "recorder" was a word of art that did not need additional definition.

B. Custodian

Idaho Code § 31-2401 states that the recorder "has the custody of and must keep all books, records, maps and papers deposited in his office" (emphasis added). This one-sentence statement is in essence the statutory extent of the described duties of the "county recorder." While an additional 115 Idaho Code sections deal with matters that may or should be "deposited" with the recorder's office (hereinafter discussed), many very relevant duties are only somewhat defined:

1. "Public Records"

There are numerous references in the Idaho Code to the documents "deposited" with the county recorder comprising the "public

record.” However, there is no succinct statement that the recorder is the custodian of the “public record.” Idaho Code § 31-2401 states that the recorder has “the custody of and must keep all books, records, maps and papers deposited in his office.” The recorder appears to meet the definition of a local public official under Idaho’s public record law (See Idaho Code § 9-337(12)).

2. “Filing”

Some Idaho Code sections indicate that a certain described document may or shall be “filed” or “filed for record” with the county recorder. This would appear to mean that the deposited document is held by the county recorder as the custodian.

3. “Recording”

While the Idaho Code does not specifically define the concept of “recording,” it has traditionally been differentiated from “filing” based upon the concept that the original document is either transcribed or copied, and then returned to the requesting depositor, with the recorder being the custodian of the copy. Idaho Code § 31-2402 states that the recorder shall “record separately, in large and well-bound separate books or through approved electronic storage systems, in legible handwriting, typewriting, photographic reproduction,” the recordable documents. The Idaho courts have made the following comments about recording:

To record an instrument means to transcribe it, repeat it, or recite it in a book of record kept for the purpose of perpetuating the terms and recitals contained in the instrument or document so recorded.

Lincoln Cnty. vs. Twin Falls Land Co., 23 Idaho 433, 130 P. 788 (1913).

4. “Indexing”

The Idaho Code does go into great depth in discussing the “indexing” duties of the county recorder (hereinafter discussed, Idaho Code § 31-2404). The term “indexing” is customarily associated with the concept of cataloging or the ability to retrieve a filed or recorded document based on the name of a party to the document, type of document, or time of recording. This ability is fundamental to the purpose of the recording system to provide “constructive notice.”

5. “Searching” and “Certifying”

Prior to 1976, Idaho Code § 31-2416 required the county recorder to conduct “searches” of their records and to “certify” the results. That statutory duty was repealed in 1976. That is not to say that the recorder’s personnel do not currently assist the public in finding

deposited documents. Idaho Code § 31-2414, entitled “Certificate of Time of Reception”, requires that a “recorded document” be issued an instrument number and that the date, time, and identity of the requester be noted on the document and certificated (hereinafter discussed).

6. “Endorsement”

Idaho Code §§ 31-2410 and 2411 require the county recorder to endorse deposited documents with certain information (hereinafter discussed). This includes the concept of “book” and “page.”

7. “Inspection”

Idaho Code § 31-2419 provides that the documents filed and recorded with the county recorder, as well as the indexes, must be open to inspection by any person in a suitable place during office hours. Presumably, the board of county commissioners has the authority under Idaho Code §§ 31-801 and 802 to set the “office hours” by ordinance or order. Idaho Code § 9-338 also provides for the public’s access to “public records” for the purposes of examination and copying. Idaho Code § 9-339 provides that a public agency must respond to a request to examine within three working days from receipt of the request. In the opinion of the authors, this does not require the recorder to search for the public record.

8. “Fees”

The fees for recording are set forth in Idaho Code § 31-3205 (hereinafter discussed). Idaho Code § 31-2418 indicates that fees must be tendered as the document or service is being requested.

9. “Microfilm Records”

Idaho Code § 31-2402A, adopted in 1963, recognizes the ability to microfilm documents as the “official records” of the county recorder.

10. “Electronically Stored Records”

Title 31, Chapter 24, Idaho Code now permits the use of “approved” electronic storage systems to be used in lieu of, or in combination with, the traditional “book” method. Storing records electronically will still require the previously established rules of indexing to be followed and is still subject to open records laws as currently practiced. More information about electronic records and their implications on Recorder procedures can be found in the question/answer section at the end of this manual.

C. Liability

Idaho Code §§ 31-2415 and 2417 speak to the issue of the recorder’s liability for errors and omissions in failing to properly perform the duties discussed in this manual. Since this manual is designed to be

an instructional document, this will be the only reference to the liability associated with the failure to properly perform.

1. “Refusal to Accept”

In this day of allodial titles, constitutional liens and affidavits of every variety, county recorders are logically concerned about what type of document they can “legally” refuse to accept. Given the importance of this question, it will be discussed in depth in a later portion of this manual. With reference to the liability exposure of the county recorder for refusing to accept a document for filing or recording, Idaho Code § 31-2417 states that the recorder is liable to the party aggrieved “for the amount of the damages which may be occasioned thereby.” The issue of actual damages is a factual question that would likely be difficult for the aggrieved party to prove. What are the actual damages of a person who wants to disavow their ceremonial marriage pursuant to a marriage license in favor of a marriage under God? While the authors are not suggesting that such a document should be refused for filing, one would certainly question the extent of actual damages if a recorder refused to accept such a document. To date, the only Idaho case dealing with alleged recorder neglect (Adams County Abstract v. Fisk, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990)), dealt with the internal handling of documents once presented for filing or recording by the requesting party, and involved a micro-filming dispute with a local title company. Idaho Code § 31-2415 goes further and states that regardless of actual damages, the prosecuting attorney may recover \$50.00 per incident from the official bond of the county recorder (discussed hereinafter). Idaho Code § 45-1701 et seq., dealing with the subject of “common law liens” (discussed below), does provide the recorder with some statutory guidance and protection.

2. “Physical Handling of Instrument”

Idaho Code § 31-2417 would also impose liability for “damages” suffered by the aggrieved party for errors and omissions associated with the physical handling of a deposited document, including the indexing of that document. Again, the author would question the ability of the aggrieved party to prove “damages.”

II. RECORDING

A. History of Recording

1. “Common Law”

The concept of recording did not exist under the common law of England. The English common law relied upon the Latin phrase “prior in tempore potior est in jure” (he who is first in time is preferred in right).

2. “Statutory”

Relying upon the police powers of the Constitution, states adopted statutory recording laws to protect their citizens from fraud associated with real property matters. Idaho’s basic recording law is found in title 55, chapter 8, of the Idaho Code.

a. “Constructive Notice”

The underlying legal principle inherent in the concept of recording is the statutory presumption that the proper recording of a document gives the public notice of the content of the document. This principle is known as “constructive notice,” and is provided for in Idaho Code § 55-811. To have constructive notice one does not have to have actually seen the recorded document. Instead, the notice comes from the fact that the document could be discovered by reasonably prudent investigation. Constructive notice can prevent a subsequent grantee of real property from being a “bona fide purchaser for value” (BFP) and can determine the priority between competing lien holders (Idaho Code § 55-812). A “bona fide purchaser for value” is someone who acquires an interest in real property without knowledge of a defect in title, and who tenders value for that interest. In Idaho, recording is not part of the actual conveyance process. When the grantor delivers a properly executed deed to the grantee, and the grantee accepts the delivery, the conveyance of title to the real property is effective. The act of recording establishes constructive notice and priority among competing interests in the same parcel of real property. Idaho Code § 55-815 provides that an unrecorded instrument is valid as between the parties to the instrument. The Idaho Supreme Court made the following observation about the primary purpose of the recording laws:

The primary purpose of the recording statutes is to give notice to others that an interest is claimed in real property, and thus give protection against bona fide third parties who may be dealing in the same property.

Matheson v. Harris, 98 Idaho 758, 572 P.2d 861, at 864 (1977).

b. “Duration of Notice”

Idaho Code § 55-817, entitled “Duration of Notice”, is a piece of time-dated legislation passed in 1951 that discussed pre-1945 liens and would appear to have no current effect. A properly recorded document would provide perpetual notice from the time of “recording” (discussed below), subject to specific statutory limitations based upon the nature of the lien as hereinafter discussed.

B. Instruments That May Be Recorded

As previously discussed, the Idaho Code does not summarily describe the specific duties of a recorder and relies upon over 150 disjointed code sections to describe those instruments that “may,” “should,” or “shall” be recorded. Idaho Code § 31-2402, entitled “Instruments to be recorded,” is a recorder’s starting point in beginning to understand the nature of the position and sets forth the authority of the recorder. The section begins with the following statement:

He must, upon the payment of his fees for the same, record separately, in large and well-bound separate books or through approved electronic storage systems, in legible handwriting, typewriting, photographic reproduction, . . .

Using Idaho Code § 31-2402 as our guide, the manual will begin to outline those instruments that may be recorded.

1. “Deeds, grants, transfers and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate and leases which have been acknowledged or proved and transcripts of judgments or decrees which affect the title or possession of real property, including water rights, any part of which is situated in the county of which the person is the recorder.” (Idaho Code § 31-2402(1)(a):

a. Definitions:

(1) “Conveyance”

Idaho Code § 55-601 states that “a conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same” or his authorized agent, which includes the name of the grantee and the grantee’s complete mailing address. Idaho does not have a statutory deed format. A conveyance document is a “warranty deed” by virtue of words of warranty being included in the instrument. A “quit claim deed” is a conveyance instrument that does not make any warranties and simply releases the grantor’s current right, title and interest. Under Idaho Code § 55-612, the use of the verb “grant” as a word of conveyance impliedly guarantees that the grantor has not previously conveyed the property to another and that it is free and clear from encumbrances made by the grantor “or any person claiming under him.”

(2) “Mortgages”

Idaho Code § 45-901 defines a mortgage as a contract by which property is hypothecated (pledged) for the performance of an act. It must be in writing and executed with the same formalities as a conveyance (Idaho Code § 45-902). However, a mortgage in Idaho creates only a lien and is not a transfer of title (Idaho Code §§ 45-903 and 906). The party granting the lien is known as the

“mortgagor,” and the party receiving the lien interest as security for performance of the act (usually a financial debt obligation) is known as the “mortgagee.” A “release” of a mortgage is a document executed by the mortgagee (secured party) indicating that the obligation has been discharged. Idaho Code § 45-914 describes releases as “certificates of discharge.” The term “satisfaction” is also customarily used to mean the discharge of an obligation.

(3) “Power of Attorney”

A power-of-attorney is a written document in which the party executing the document appoints a named party or parties to act as his or her “attorney-in-fact” with the express authority to execute the appointing party’s signature. A power of attorney completed in accordance with Idaho Code §45-908 would authorize the appointed party to execute a mortgage in the name of the person whom they represent. If the power to execute is recorded, a future revocation of that power must be recorded to be effective (Idaho Code § 55-814). Idaho Code § 55-806 requires that the power-of-attorney be recorded before any instrument executed by the attorney-in-fact can be recorded. Presumably, the power-of-attorney would have to be recorded before a revocation of that power could be recorded.

(4) “Leases”

A leasehold estate is a type of estate in real property that expires at a known date in the future. A “lease” would be a written conveyance document meeting the requirements of Idaho Code § 55-601 that purports to transfer a leasehold estate from the grantor to the named grantee. The grantor is often referred to as the “lessor” or “landlord.” The grantee may be referred to as the “lessee” or “tenant.” Most leases will also contain contract language and be signed by both of the parties to the contract.

b. Documents to be recorded as a “grant or transfer of real estate” (title 55, chapter 8, Idaho Code) Idaho Code § 55-801 states that “any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter” (emphasis added).

(1) “Judgments Affecting Title”

Idaho Code § 55-802 provides that court judgments affecting either title to or possession of real property are recordable transfers. The judgment document must be authenticated by the certificate of the clerk of the court in which the judgment was rendered. However, it does not need to be acknowledged to be recordable (discussed below). Idaho Code § 31-2407 also directs the recorder to record certified copies of judgments that “partition” or affect title or possession of real property, including water rights.

(a) “Partition Actions” - Idaho Code § 31-2408 specifically provides for the recording of judgments in partition actions. “Partition” is a court action brought by someone who is a tenant-in-common or joint tenant with one or more other parties in the ownership of real property to have the court terminate the common ownership and define the singular (severalty) ownership of the requesting party or parties (Idaho Code § 6-501 et seq.). Prior to “partition” by the court, the parties to a common ownership have “undivided interests.” The recorded judgment acts as a conveyance of the new descriptions.

(b) “Water Rights” - Idaho is an “appropriation” state when it comes to water rights. As a general rule, all water belongs to the “people.” An individual property owner may appropriate (divert) the public’s water to a beneficial use on the property owner’s land. When there is conflict between appropriators over who has priority to use the public’s water, the court is often asked to “adjudicate” the competing claims (Idaho Code § 42-1401 et seq.). A court order in a water rights adjudication would specifically be recordable as a judgment affecting real property.

(c) “Quiet Title Actions” - Idaho Code § 6-401 states that any adverse claim to real property other than water rights issues shall be considered a “quiet title action.” Most properly recordable judgments affecting title to real property will be issued in quiet title actions. Unfortunately, the judgment will not likely be called a “quiet title action judgment.”

(d) “Condemnation Actions” - Idaho Code § 7-701 et seq. deals with the subject of eminent domain and condemnation actions. “Eminent domain” is the ability of the government to take private property rights for public purposes by paying just compensation. If the property owner resists such a request, the government entity must commence a condemnation action in court. The final order of condemnation must be “filed” in the recorder’s office (Idaho Code § 7-716). The order serves as a conveyance to the governmental entity. Public highway condemnations are controlled by Idaho Code § 40-2302 and require the “filing and recording” of a certified copy of the decree in the recorder’s office.

(2) “United States Patents”

Idaho Code § 55-803 includes U.S. patents as recordable real estate transfers. This includes geothermal resources and mineral rights granted by the United States. Recorders will likely see more requests for the recording of patents due to the apparent belief by “constitutionalists” that patented title is the only proper form of title. It should be noted that patents are issued by agencies of the federal government and not by private parties alleging to be “freeholders” or

successors in interest to government lands (see “what should not be recorded,” discussed below).

(3) “Notices of Location”

Idaho Code § 55-804 provides that certificates and notices of location that are authorized by law, with the affidavits attached, may be recorded as a recordable transfer. No acknowledgment or further proof is necessary. While the author is not exactly sure what the legislature meant by the term “certificates and notices of location,” the following are some statutory provisions that seem to deal with the concept of “location”:

(a) “Carey Act Water Rights” - The Carey Act is a federal law that deals with land acquisition associated with improvement of the land. The concept of irrigation is a major part of the acquisition process. Idaho Code § 42-2502 recognizes the ability to record instruments associated with “use and location” of water rights associated with Carey Act lands. The instrument reciting such locations and transfers must be acknowledged in the same manner as a deed and “shall be” recorded in the county where the land is situated.

(b) “Mining Claims” - Idaho Code § 47-604 provides that within 90 days of the locating of a mining claim the locator must “file for record” a notice of location in the office of the county recorder in the county in which the claim is situated. Failure to file is considered an abandonment of the claim.

(4) “Affidavits”

Idaho Code § 55-816 includes various types of affidavits under the chapter heading of “recordable transfers of real property” that are in “respect to any person mentioned in any recorded instrument affecting title to real property” or the “identification of plats or descriptions of real property.” An “affidavit” is a statement of assertions made by the “affiant” under oath. This is normally done before a notary public using the jurat “sworn to and subscribed before me this ____ day of _____, 20__” (see acknowledgments below). A document entitled an affidavit that uses an acknowledgment jurat would not be a proper affidavit. The following affidavits are described in Idaho Code § 55-816:

- (a) “Facts showing or explaining marital status.”
- (b) “Identity of persons.”
- (c) “Possession of real property when the title thereof is deraigned (proven) through tax deed.” (parenthetical added)

- (d) "Delivery of a deed by grantor during grantor's lifetime."
- (e) "Occupation of real property as a homestead."
- (f) "Date of birth."
- (g) "Date of death."
- (h) "Date of marriage."
- (i) "Place of residence."
- (j) "Plats & legal descriptions."
- (5) "Summaries of Instruments"

Idaho Code § 55-816 includes "a summary of any instrument creating an interest in, or affecting the title to or possession of real property" as a recordable transfer of real estate. The summary must be signed and acknowledged by all parties to the original instrument. The summary must state the following:

- (a) "Name of the parties to the original instrument,"
- (b) "Complete mailing address of the grantee,"
- (c) "Title and date of the instrument,"
- (d) "A description of the interests created by the instrument," and
- (e) "Legal description of the property."

c. "Requirement of Acknowledgment"

Idaho Code § 55-805 provides that unless otherwise expressly provided, the execution of an instrument must be acknowledged by the person executing the instrument before it is recordable. Most transfer instruments will have to be properly acknowledged to be recordable.

(1) "Capacity"

Under Idaho Code § 55-801 and title 55, chapter 7, Idaho Code, dealing with the specific acknowledgment jurats to be used, the status or capacity of the party executing the instrument is important.

(2) "Procedure"

Title 55, chapter 7, Idaho Code, sets forth the procedure and the persons authorized to do acknowledgments and proofs of execution.

- (a) "Within Idaho" - Idaho Code §§ 55-701

and 702 provide that within the state and within an official's jurisdictional area, the following parties may do acknowledgments and proofs of execution:

1. Justices and clerks of the Supreme Court.
2. Notaries public.
3. Secretary of State.
4. U.S. Commissioners.
5. Judges and clerks of a court of record.
6. County recorder.
7. Justice of the Peace.

Idaho Code § 55-706 further provides that appointed deputies of such officials may also do acknowledgments and proofs.

(b) "Outside Idaho in the U.S." - Idaho Code § 55-703 provides that the following people may effectuate an acknowledgment or proof of execution outside of Idaho and within the United States:

1. Justice, judge or clerk of any court of record.
2. State commissioners appointed by their governor for such purpose.
3. Notary public.
4. Any officer authorized by the laws of a state or territory to do acknowledgments.

Idaho Code § 55-805 provides that an acknowledgment executed according to the laws of another state or territory shall be recordable and that the certificate shall be prima facie sufficient. This would appear to apply to any variations in the use of notary seals and stamps.

(c) "Outside the United States" - Idaho Code § 55-704 provides for a long list of persons in foreign countries whose proof or acknowledgment of an instrument will be honored in the United States.

(d) "Members of the Armed Forces" - Idaho Code § 55-705 provides that any officer of a military component can acknowledge the execution of an instrument by a member of the armed forces of the United States, both within and without the United States.

The recital is prima facie sufficient.

(e) “Requisites” - Idaho Code § 55-707 provides that the officer taking the acknowledgment must know or have satisfactory evidence that the person making the acknowledgment is the person described in the instrument, including representations of capacity. The proper certificate must be used, and the officer must authenticate the certificate by placing his or her signature and official seal, if the law or the jurisdiction requires official seals (Idaho Code § 55-716). Idaho notaries public are required to use seals (Idaho Code § 51-106). Proofs can be taken from persons other than the person executing the instrument (Idaho Code §§ 55-718 thru 724). While arguably allowable, it is probably not good office policy to have the same person in the recorder’s office taking the acknowledgment and receiving the document.

d. “Place of Recordation”

Idaho Code § 55-808 states that instruments entitled to be recorded must be recorded in the county in which the affected real property is situated. Presumably it is not properly recordable in any other county. If a described parcel of property is located in two adjacent counties, it would presumably be necessary to record the document in both counties. The Idaho Code does not speak to this issue.

e. “Recorded”

Idaho Code § 55-809 states that an instrument is deemed to be recorded when properly acknowledged and deposited in the proper recorder’s office. However, Idaho Code § 31-2414 would suggest that a document is not recorded until it is indexed in the proper book (discussed below).

f. “Books of Record”

Idaho Code § 55-810 provides that grants and conveyances are to be recorded in one set of books, and mortgages in another set or in an approved electronic storage system containing segregated, searchable, and retrievable files.

g. “Specific Instruments:”

(1) “Mortgages and Releases”

As previously discussed, mortgages of real property are controlled by title 45, chapters 9 and 10, of the Idaho Code.

(a) “Any interest in Real Property”: Idaho Code § 45-1001 provides that any interest in real property that is transferable is eligible to be mortgaged.

(b) “Acknowledgment” - Idaho Code § 45-1003 specifically requires that mortgages be acknowledged to be

recordable.

(c) “Master Form” - Idaho Code § 45-1004 allows for the recording of a master form that can later be referred to and incorporated by reference into specific mortgage agreements. The code section provides that master forms are viewed as a “conveyance” with reference to such matters as indexing and fees.

(d) “Assignment” - Idaho Code § 45-909 provides that an assignment of a mortgage may be recorded in like manner of a mortgage.

(e) “Discharge” - Discharge of a mortgage means that the obligation has been satisfied and the lien released. This may be accomplished in two ways:

1. “Margin Entry” - Idaho Code § 45-912 provides that the mortgagee may sign a margin entry on the recorded mortgage document indicating satisfaction under oath before the recorder. The statute also provides for a certificate for the oath.
2. “Discharge Certificate”: Idaho Code § 45-913 provides for the recording of a discharge certificate executed by the mortgagee.

(2) “Trust Deeds (Deeds of Trust)”

Not to be confused with a deed that transfers title to real property into an established trust. A “trust deed” is an instrument executed in conformance with title 45, chapter 15, of the Idaho Code, conveying real property to a statutorily recognized trustee to secure the performance of an obligation (Idaho Code § 45-1502(3)). Under Idaho Code § 45-1003, a trust deed may be acknowledged and recorded in like manner as grants and conveyances of real property.. The grantor of a trust deed is the property owner/debtor. Some documents refer to the grantor as the “trustor.” The trustee will be named in the document, and by statute can be a bank, attorney, title insurance agent, or licensed trust organization. It is customarily a title insurance agent (title company). The creditor is referred to as the “beneficiary.” The trustee holds the lien created by the instrument (Idaho is a lien theory state) for the benefit of the “beneficiary.” At the request of the beneficiary, the trustee can initiate foreclosure of the lien. In addition, the statutory trust

deed process creates other recordable instruments:

(a) "Master Form" - Much like a mortgage, Idaho Code § 45-1004 recognizes the ability to record a master form of the trust deed and then refer to the master form in subsequent documents.

(b) "Notice of Default" - In the event of an allegation of delinquency made by the beneficiary (creditor), the trustee must record a "Notice of Default" to begin the foreclosure procedure (Idaho Code § 45-1505). Under Idaho Code § 45-1511, a party may record a "request for a copy of notice of default." The code section sets forth the necessary content of that document. This does not impose upon the recorder a duty to notify the requester; the duty is placed upon the trustee.

(c) "Trustee's Deed" - In the event of an actual foreclosure sale, Idaho Code § 45-1510 provides for the recording of a "trustee's deed" to the purchaser at the sale.

(d) "Reconveyance" - Whereas mortgages are discharged upon the full performance of the obligation secured by the mortgage, trust deeds are "reconveyed" by the trustee under Idaho Code § 45-1514. The document is normally entitled a "deed of reconveyance" and is recordable (Idaho Code § 45-1205).

(e) "Appointment of Successor Trustee" - Occasionally, it will be necessary for the beneficiary (creditor) to appoint a successor trustee. This document is recordable under Idaho Code § 45-1504.

(3) "Miscellaneous Conveyance Documents:"

(a) "Cemetery Lots" - Idaho Code § 50-320(C) provides for the recording of certificates for cemetery lots as conveyance documents without acknowledgment.

(b) "Delinquency Deeds" - Idaho Code § 50-1744 provide for the recording of LID delinquency deeds and the subsequent sale of the property to satisfy the delinquency.

(c) "Sale of County Property" - Idaho Code § 31-808 provides for the sale and deeding of excess county property and the recording of such deeds.

2. Marriage Documents Idaho Code § 31-2402(1)(b)

a. "Certificates of Marriage"

Idaho Code § 32-306 provides that when a marriage has been solemnized, the person performing the solemnizing must give to each of the parties a "certificate." Idaho Code § 39-262 requires every person performing a wedding ceremony to prepare a "certificate of marriage" in duplicate and to file one copy with the county recorder for

forwarding to the State Department of Health and Welfare. Idaho Code § 32-407 also provides that the county recorder shall “record” all returned marriage licenses.

b. “Marriage Settlement Agreement”

Idaho Code § 32-916 provides that the property rights of a husband and wife can be governed by a “marriage settlement agreement” entered into prior to or during marriage. Such agreements must be in writing and executed and acknowledged in the same manner as conveyances (Idaho Code § 32-917). If properly executed and acknowledged, it must be recorded in every county in which real estate affected by the contract is located (Idaho Code § 32-918). Failure to record has the same effect as failing to record a conveyance (Idaho Code § 32-919).

c. “Affidavits of Marriage”

As previously discussed, Idaho Code § 55-816 provides that affidavits explaining marital status and the date of marriage, with respect to any person mentioned in any recorded instrument affecting title to real property (emphasis added), may be recorded in the county where the property is situated.

3. “Wills admitted to probate”

(Idaho Code § 31-2402(1)(c)): Idaho Code § 15-3-102 deals with the subject of admitting a will to probate. Presumably, the original of the will is retained by the clerk of court and a certified copy is submitted for recording.

a. “Informal Probate”

Idaho Code § 15-3-301 provides for an administrative process for the informal probate of a will before a “registrar.” The action is commenced by the filing of an application with the registrar. The registrar will issue an order which would be the appropriate evidence of the will having been probated (Idaho Code § 15-3-307).

b. “Formal Probate”

Idaho Code § 15-3-401 provides for the formal probating of a will in a court action. The action is commenced by the filing of a petition with the court asking for an order probating the will.

c. “Probate Documents”

Idaho Code § 15-1-305A provides for a number of probate documents which are recordable if they affect title to real property:

- (1) “Letters of personal representatives (foreign and domestic).”

- (2) "A statement of informal probate."
- (3) "Determination of heirship."
- (4) "Testacy proceeding orders."
- (5) "Deeds, assignments, releases or other instruments executed by an appointed personal representative."
- (6) "An affidavit of a successor in interest."
- (7) "Testacy proceeding decrees from other states."

d. "Miscellaneous Probate documents:"

- (1) "Renunciations"

Idaho Code § 15-2-801 provides for the recording of renunciations of an interest in real property by a potential heir.

- (2) "Lost Will Orders"

Idaho Code § 15-3-409 provides for the recording of probate court orders establishing the provisions of a lost will.

- (3) "Transfer at Death Agreements"

Idaho Code § 15-6-201(d) requires that agreements to pass title to property at death must be recorded to be effective.

4. "Official bonds"

(Idaho Code § 31-2402(1)(d)) - Title 59, chapter 8, Idaho Code, deals with the bonds of officers and public employees ("Surety Bond Act"). Idaho Code § 59-809 provides that once an official bond is approved, it must be recorded in a book kept for that purpose and entitled "Record of Official Bonds." Although this code section uses the word "recorded," it does not mention the office of the county recorder. In fact, Idaho Code § 59-811 would appear to recognize that bonds can be "filed" with various "officers." Many county officers no longer have surety bonds due to the ability to substitute "suitable crime insurance" for the bond requirement (Idaho Code § 59-804).

a. "Actions on Bonds"

Under Idaho Code §§ 59-829 and 830, when a court action is commenced against a bond, the clerk of court issues a certificate to that effect and the county recorder must endorse it and record it in the same manner as a *lis pendens* (discussed hereinafter).

b. "Expiration"

Idaho Code § 59-831 provides that the county recorder must notify the board of county commissioners when the bond of a county officer or employee expires or when any person fails to furnish the official bond required by law.

c. “Recorder’s Bond”

Idaho Code § 31-2309 provides that the recorder’s bond is filed with the district court judge and an attested copy is recorded.

5. “Notices of mechanic’s liens”

(Idaho Code § 31-2402(1)(e)): Mechanic’s liens are controlled by title 45, chapter 5, of the Idaho Code. A “mechanic” is someone who performs labor or furnishes materials to render value to real property (Idaho Code § 45-501). To the extent that they are not properly compensated for their efforts, a mechanic can claim a lien against the real property that he or she has improved. Idaho Code § 45-507 describes the claim of lien notice that must be recorded to effectuate the lien. The statement of demand must be verified under oath by the claimant. Idaho Code § 45-509 provides that the county recorder must record such claims in a book kept for that purpose and must index them in the same way as conveyances. It would appear that the lien notice does not need to be acknowledged to be recordable. A-J Corp. v. GVR, Ltd., 107 Idaho 1101, 695 P.2d 1240 (1985). The lien is only good for six months unless sued upon by the claimant (Idaho Code § 45-510). When suit is filed, a lis pendens will be recorded (discussed below). Idaho Code §§ 45-518 and 519 provide for a procedure in which the lien can be released by posting a surety bond with the court.

6. “Transcripts of judgments which by law are made liens upon real estate”

(Idaho Code § 31-2402(1)(f)) - Idaho Code § 10-1110 provides that any judgment or transcript of a judgment certified by the court clerk having custody of the original judgment document may be recorded in the recorder’s office, and becomes a lien once recorded. This would include child support orders and orders of restitution (Idaho Code § 19-5305). As a general rule, the duration of the lien is only five years. Child support orders and judgments are an exception to this rule. The lien can be renewed for another five years by application to the court (Idaho Code § 10-1111). The “renewed judgment” may be recorded in the same manner as the original judgment. Idaho Code § 10-1306A provides for a process in which judgments from other states (“foreign judgments”) can be filed with the court and then a certified copy of the filed foreign judgment recorded.

7. “Notices of attachments upon real estate”

(Idaho Code § 31-2402(1)(g)) - The term “attachments” is a word of art referring to a court procedure in which the county sheriff is ordered to take custody of property to secure the payment of a judgment (Idaho Code § 8-501). If the property to be seized is real property, the sheriff must file a copy of the writ with the county recorder (Idaho Code § 8-506). If the property is executed upon by the sheriff, a “return of execution” is recorded (Idaho Code § 6-106), and a “certificate of sale” (Idaho Code § 6-107).

8. “Notices of the pendency of an action affecting real estate, the title thereto or possession thereof”

(Idaho Code § 31-2402(1)(h)) - Idaho Code § 5-505 describes such notices as “lis pendens” and provides for their recording. It is clear that the court action would have to be filed with the county recorder for the recording of the lis pendens to be proper. The notice must contain a description of the property and of the nature of the action or defense.

9. “Instruments describing or relating to the separate property of married women”

(Idaho Code § 31-2402(1)(i)) - Idaho Code § 32-907 provides that a full and complete inventory of the separate property of a wife may be signed by her, acknowledged in the same manner as a conveyance and recorded in the county where she resides. The filing is prima facie evidence of the title of the wife (Idaho Code § 32-908).

10. “Notices of preemption claims”

(Idaho Code § 31-2402(1)(j)) - A “preemption claim” is a claim to ownership or use of real property based upon occupancy of the property. Idaho Code § 9-326 uses the term “preemption claim” in describing federal land purchase and location certificates. A mining claim filed under Idaho Code § 47-604 (above-discussed), would be an example of a preemption claim.

11. “Certified copies of any petitions, with the schedules omitted, filed [filed] in, and certified copies of any order or decree made and entered in, any proceeding under the National Bankruptcy Act.” (Idaho Code § 31-2402(1)(k)).

12. “Financing statements under the Uniform Commercial Code which cover timber to be cut, minerals or the like (including oil and gas), accounts subject to Idaho Code § 28-9-103(5), or fixtures.” (Idaho Code § 31-2402(1)(l)):

a. “Accounts subject to Idaho Code § 28-9-301(4)”

This code section deals with accounts associated with mineral sales at the wellhead or minehead. A creditor who would

want to perfect a security interest in this type of account would file the UCC-1 financing statement with the county recorder of the county where the minehead or wellhead is located.

b. “Fixtures”

Idaho Code § 28-9-102(41) defines “fixtures” as goods that have become so related to particular real estate that an interest in them arises under real estate law. A “fixture filing” is the filing of a UCC-1 financing statement or the security agreement in the recorder’s office where a mortgage against the real property would be recorded (Idaho Code § 28-9-102(40)).

c. “Goods to be severed from realty”

Idaho Code § 28-2-107 provides that a contract for the sale of minerals or a structure or its materials to be severed from real property is recordable as a conveyance.

13. “Notice of order of a general adjudication in conformance with section 42-1408A, Idaho Code”

(Idaho Code § 31-2402(1)(m)) - Under Idaho Code § 42-1408(2)(e), the director of the Idaho Department of Water Resources must file a copy of the notice of the order commencing a general water rights adjudication in the recorder’s office of each county where a part of the adjudicated water system is located.

14. “Such other writings as are required or permitted by law to be recorded”

(Idaho Code § 31-2402(1)(n)): Determining the nature of “other writings” that are permitted or required by Idaho law to be recorded has been no simple task. The authors have identified over fifty “other writings,” to wit:

a. “Miscellaneous Liens:”

(1) “Carey Act Water Rights Lien”

Idaho Code § 42-2026 provides that anyone supplying water to Carey Act lands shall have a lien against the land benefited for the value of the furnished water. The contract for the furnished water may be recorded under Idaho Code § 42-2027 and acts as a lien.

(2) “Notice of Federal Liens”

Title 45, chapter 2, of the Idaho Code, entitled “Uniform Federal Lien Registrations,” provides for the filing and/or recording of “notices of lien” for federal tax liens and other federal liens in the county recorder’s office (Idaho Code § 45-202). Idaho Code § 45-202 also specifies the place of filing based upon the nature of the property and/or the person/entity being liened. Liens against real

property are recorded in the county where the real property is located. Idaho Code § 45-203 provides that acknowledgment is not required. The Idaho Code is silent on whether the recorder is required to maintain a special index for federal liens.

(3) “Logger’s Liens”

Title 45, chapter 4, of the Idaho Code deals with the subject of “logger’s liens.” Idaho Code § 45-509 states that recorders must record any claim filed under chapter 4 and index it the same way as a conveyance.

(4) “Hospital, Nursing Care and Medical Care Liens”

Title 45, chapter 7, Idaho Code, deals with medical care liens that such facilities and providers can place against the proceeds from claims and causes of action that an injured person may have against the wrongdoer for the value of the medical services rendered to the injured person. The lien claim is filed in the recorder’s office of the county where the care rendering facility or provider is located (Idaho Code § 45-702). Idaho Code § 45-703 requires the recorder to maintain a hospital lien book with a proper index.

(5) “Employment Security Law Liens”

The Director of the Idaho Department of Employment is authorized to file certificates with the office of the secretary of the state claiming unpaid employment security contributions by an employer located in the county (Idaho Code § 72-1360), which then becomes a lien against the employer’s property.

(6) “County Financial Assistance Liens”

Idaho Code § 31-3504 provides for the recording of liens for indigent medical assistance provided by the county.

(7) “Water Liens”

Idaho Code § 42-906 provides for the recording of liens associated with providing water service to property owners.

(8) “State Liens”

Idaho Code § 45-1901, applies to Idaho Tax Commission liens, employment security liens, department of labor liens, child support liens and medical assistance liens. These lien documents are now filed with the Idaho Secretary of State.

(9) “Attorney Fees”

Idaho Code § 3-205 authorizes an attorney to place a lien on the client’s cause of action for attorney fees. From the

commencement of the action the attorney has a lien that attaches to a verdict, report, decision or judgment in the client's favor. The attorney can enforce said lien in the same case that generates to favorable verdict, report, decision or judgment. Fraze v. Frazee, 104 Idaho 463, 660 P.2d 928 (1983).

(10) "Agricultural Commodity Produce or Dealer Liens"

Idaho Code § 45-1802 authorizes purchasers and dealers to assert a lien on the proceeds of a sale until payment is made in full.

b. "Homestead Exemption"

Prior to 1989, a property owner had to record a declaration claiming that his residential property was his "homestead" (principal residence) in order to receive the statutory protection against forced sale by a creditor. Today, the protection is automatic based upon the factual use and occupation of the property as a principal residence (Idaho Code § 55-1004(2)). However, the property owner can still record a declaration under Idaho Code § 55-1006. This would be required if the dwelling is not constructed yet or it is a mobile home. The law also presumes an abandonment of the homestead protection if the property owner fails to occupy the residence for six months. In order to overcome this presumption, a temporarily absent homeowner can record a declaration of non-abandonment (Idaho Code § 55-1006). The declaration must be acknowledged in the same manner as a conveyance.

c. "Tax Deed Affidavits of Compliance"

Idaho Code § 63-1005 provides for the recording of an affidavit of compliance with procedures by the county treasurer as part of the tax deed process.

d. "Certificates of Sale"

Idaho Code § 31-2406 provides that the recorder shall maintain a book with proper index entitled "certificates of sale" for the recording of all certificates for the sale of real estate by execution or judicial proceeding.

(1) "Executions"

Idaho Code §§ 11-308 and 309 describe the certificates of sale associated with executions.

(a) – Sale of property capable of manual delivery – Idaho Code § 11-308 provides that the officer making the sale of personal property capable of manual delivery must deliver the property to the purchaser. The officer may execute and provide a certificate of sale if desired.

(b) – Sale of property not capable of manual delivery – Idaho Code §11-309 provides that the officer making the sale of property not capable of manual delivery must provide a certificate of sale to the purchaser when he has paid the purchase-money.

(2) “Redemptions”

In the event that judgment debtor redeems from the sale, a certificate of redemption is issued and recorded (Idaho Code § 11-403).

e. Real Property Development Matters:

(1) “Platting”

Idaho Code § 50-1310 provides that all approved plats of subdivisions shall be filed with the county recorder. This code section and Idaho Code § 50-1304 set forth the required size and reproducible nature of the original plat document. The plat must be verified by a professional land surveyor hired by the county (Idaho Code § 50-1305). Plat names cannot be duplicated in the same county (Idaho Code § 50-1307). Idaho Code §§ 50-1308 and 1309 describe the necessary approvals and certifications that must be on the face of the plat document. The county treasurer's certificate must be done within 30 days prior to recording. Idaho Code § 50-1327 provides that a plat may not be recorded without the statement of a “sanitary restriction” unless there is submitted at the same time, the certificate of approval from the director of the department of health and welfare as required in section 50-1326, Idaho Code.

(a) “Forced Plats” - Idaho Code § 50-1314 imposes upon the county recorder the duty to advise property owners who have divided their property into five or more parcels of the need to plat the divisions and to prepare the plat at the property owner's expense if they fail to comply with the law within 30 days of notice. The county commissioners authorize the expenditure and the costs are collected in the same manner as taxes. Presumably the county planning and zoning department would have to advise the recorder that excessive divisions had occurred in violation of the county subdivision ordinance.

(b) “Assessment Forced Plats” - Idaho Code § 63-210 provides that the assessor can request a forced plat when recorded legal descriptions are not sufficient to assess the property. The assessor notifies the county recorder who uses the procedure set forth in Idaho Code § 50-1314.

(c) “Vacations” - Idaho Code § 50-1317 provides for the procedure to vacate part or all of a plat. This is normally done by ordinance or order. A certified copy of the ordinance or order can be recorded pursuant to Idaho Code § 50-1324; provided, however,

that the county treasurer has certified that all property taxes have been paid. The custodian of the original order is the certifying official.

(2) "Records of Survey"

Idaho Code § 55-1904 provides that a surveyor upon completion of a "survey" shall record a record of survey with the county recorder. Idaho Code § 55-1905 describes the physical nature of the required document, and Idaho Code § 55-1906 describes the contents of the document. Idaho Code § 55-1910 provides for a "Records of Survey" book or file in an approved electronic storage system.

(3) "Corner Perpetuation"

Idaho Code § 55-1605 provides for the recording by a professional land surveyor any corner record as defined in Idaho Code § 55-1604.

(4) "Assessor's Map"

Idaho Code § 63-210 requires the county assessor to assign tax parcel numbers to each land description. The assessor must file with the county recorder an accurate and complete list of such numbers by the fourth Monday of June each year. The recorder must maintain a book entitled "record of tax numbers." Presumably, this can be handled by computer and be considered a book.

(5) "Condominium Instruments"

Idaho Code § 55-1505 describes the documents associated with the creation of a condominium. A "condominium" is a form of ownership in which a parcel of real property is declared to have private, limited common and common ownership existing all at the same time. Any document associated with the formation of or modification of a condominium project may be recorded under Idaho Code § 55-1508. There is no mention of a need for acknowledgment.

(6) "Unincorporated Nonprofit Associations"

Idaho Code § 53-701 et seq. allows for the formation of unincorporated nonprofit associations. These associations are often used as homeowner associations in residential real estate subdivisions. Idaho Code § 53-705 indicates that such associations can transfer interests in real property by executing and recording a "statement of authority." The statement of authority would have to be acknowledged to be recordable.

(7) "Urban Renewal Plans"

Idaho Code § 50-2011 provides for the recording of urban renewal plans by municipal urban renewal agencies.

(8) “Conservation Easements”

Idaho Code § 55-2102 provides for the recording of accepted conservation easements.

(9) “Agricultural nuisance waivers”

Idaho Code § 22-4504 provides that a county planning and zoning authority may adopt a nuisance waiver procedure to be recorded with the county recorder or appropriate county recording authority pursuant to residential divisions of property.

f. “Natural Resources Development.”

(1) “Slash Disposal Liens”

Idaho Code § 38-123 provides for the recording by the Idaho Department of Lands of liens against logged real property for the cost of slash disposal.

(2) “Prospecting and Mining Contracts”

Idaho Code § 53-411 provides that prospecting and mining contracts, when signed by the parties to the contract and at least one witness, may be recorded in the office of the county recorder for the county where the business is to be conducted or the property located. Idaho Code § 53-411 provides for the recording of mining partnership agreements.

(3) “Sale of Water Rights”

Idaho Code §§ 42-2604 and 42-2603 require the recording of a certificate of sale for water rights sold within an irrigation project.

g. “Taxing District Matters.”

Idaho Code § 63-215 requires that a description of the boundary locations of a taxing district be recorded in the county or counties where the district is located. The following are specific taxing district recording requirements found in the Idaho Code:

(1) “Stumpage District Formation”

Idaho Code § 38-1001 et seq. provides for the formation of “stumpage districts” so as to remove stumps. Idaho Code § 38-1005 provides that the county commissioner’s order establishing the district be filed with the county recorder.

(2) “Drainage District Assessment Rolls”

Idaho Code § 42-2935 provides that drainage district assessments established by the court shall be certified to the recorder, who shall enter the order upon the record.

(3) “Ground Water Management.”

(a) “Aquifer Recharge District” - Idaho Code § 42-4228 provides for a recording of a certificate of full payment of assessment. Idaho Code § 42-4230 provides that the order of the court excluding properties from a district shall also be filed for record in the recorder’s office.

(b) “{Management District Exclusion Order” - Idaho Code § 42-5131 provides that the court order excluding properties from a district shall be recorded.

(c) “Ground Water District” - Idaho Code § 42-5250 provides for the recording of district formation documents.

(4) Irrigation Districts:

(a) “Annual Report” - Idaho Code § 30-806 provides for the recording of the annual report of an irrigation district.

(b) “Oaths and Bonds” - Idaho Code § 43-202 requires that the oaths and bonds of district directors shall be recorded in the office of the county recorder.

(c) “Contracts” - All contracts entered into by irrigation districts are to be recorded in the office of the county recorder under Idaho Code § 43-330D.

(d) “Payment Certificates” - Idaho Code § 43-616 provides that payment certificates shall be acknowledged as conveyances of real property and may be recorded.

(e) “Delinquencies” - The delinquency list of an irrigation district is to be filed with the county recorder (Idaho Code § 43-711). The list needs to be certified by the treasurer of the district.

(f) “Loss of Water Right” - Idaho Code § 43-1119 provides for the recording of a loss of water right notice.

(g) “Boundary Changes” - Idaho Code § 43-1010 provides for the recording of boundary change orders.

(h) “Annexation Orders” - Idaho Code § 43-2411 provides for the recording of annexation orders.

City and county formed irrigation systems also have recording mandates. The city districts are governed by Idaho Code § 50-1833, and the county districts by Idaho Code §§ 42-2814 and 2974.

h. “Business Matters:”

(1) “Assumed Business Names”

Idaho Code § 53-504 requires that “Any person who proposes to or intends to transact business in Idaho under an assumed business name shall, before beginning to transact business, file

with the secretary of state a certificate of assumed business name in a form prescribed by the secretary of state. Prior to January 1, 1997, those certificates were filed with the county recorder. Beginning January 1, 1997, those certificates are filed with the Idaho Secretary of State.

(2) "Bank Mergers and Affiliations"

Idaho Code §§ 26-905 and 1402 provide for the recording of notifications of bank mergers and affiliations.

(3) "Leases of Livestock"

Idaho Code § 25-2001 provides that leases for more than 10 head of livestock must be in writing, acknowledged and recorded with the county recorder in the same manner as a conveyance.

i. "Miscellaneous:"

(1) "Idaho Public Utility Commission Orders"

Idaho Code § 61-608 provides that the orders of the IPUC may be recorded in the office of the county recorder.

(2) "Military Discharge Orders"

Idaho Code § 65-301 provides that military discharge papers may be recorded in the recorder's office at no cost to the veteran.

(3) "Federal Land Rights of Way"

Idaho Code § 40-204A provides that the State of Idaho recognizes the federal land rights of way created under "Revised Statute 2477" of the federal law. Idaho Code § 40-204A(6) states that persons seeking acknowledgment of federal land rights of way shall file with the county recorder a request for acknowledgment and any supporting documentation. The county recorder shall place the acknowledgment document on the county road system map.

(4) "County Road Systems"

Idaho Code §§ 40-202 and 203 provide for the recording of a county roadway system description.

(5) "Agreements To Pass Property At Death To Surviving Spouse (Community Property Agreements)"

Idaho Code § 15-6-201(c) provides for what are commonly called community property agreements. They are to be executed and acknowledged in the same way as deeds. To be effective, such agreements must be recorded with the county recorder in the county where community real property is located (Idaho Code § 15-6-201(d)). The statute also provides for the recording of amendments.

(6) "Manufactured Home Statement of Intent"

Idaho Code § 63-304 provides that the owner

of a permanently affixed manufactured home can have the manufactured home treated as real property for property tax assessment purposes by recording a "statement of intent" with the county recorder of the county where the real property is located. The declaration is to be on a form prescribed by the Idaho Tax Commission and shall have the original title or certificate of origin for the manufactured home attached to the declaration. Idaho Code § 63-305 also provides for a declaration of reversal on an Idaho Tax Commission prescribed form that shall be recorded (presumably with the county recorder of the county where the statement of intent was recorded).

(7) "Homestead Claims"

While likely moot today, Idaho Code § 58-903 provides for the recording of homestead claims.

(8) "Historic Property Sites"

Idaho Code § 67-4615 provides for the recording of notices of the declaration that a property is a historic property.

(9) "Criminal Forfeitures"

Idaho Code § 37-2744A provides for the recording of notices by the Idaho State Police concerning the seizure and forfeiture of real property associated with drug trafficking crimes.

(10) "Conservator's Letters"

Idaho Code § 15-5-421 provides for the recording of the letters of appointment for a conservator and the creation of a conservator's lien (Idaho Code § 15-5-602).

C. Documents That Should Not Be Recorded

1. "Improperly Executed Documents"

It is somewhat a matter of common sense that a document must be executed by the party acting within the content of the document for it to be a proper document for recording. Idaho Code § 55-805 would certainly imply such a requirement with reference to instruments affecting title or possession of real property. Idaho Code § 32-912 specifically requires both spouses to execute a conveyance of community property. In this day of facsimile documents, it would still appear that Idaho law requires original signatures or marks. Idaho Code § 73-114 defines a "signature" as including a "mark" made by a person who cannot write, and witnessed by a person who signs his or her own name. Presumably, the acknowledgment could serve as the witness. Idaho Code § 59-1019 does allow authorized public officials to use a facsimile signature. The authors were unable to find a similar code section for the common person.

2. “Improperly Acknowledged Documents”

Idaho Code § 55-805 states that “before an instrument may be recorded, unless it is otherwise expressly provided, its execution must be acknowledged by the person executing it” (emphasis added). As indicated, this statutory statement uses the term “instruments,” and is found in title 55, chapter 8, of the Idaho Code dealing with “instruments and judgments affecting title to or possession of real property” (Idaho Code § 55-801). At a minimum, such documents must be “properly” acknowledged unless otherwise excused by statute. A “U.S. Patent” under Idaho Code § 55-803 would be an instrument that specifically does not require acknowledgment to be recordable. As previously discussed, title 55, chapter 7, of the Idaho Code describes the requirements of a “proper acknowledgment.” Aside from an improper acknowledgment being grounds for refusal to record, a recorded instrument with an improper acknowledgment does not cause “constructive notice.” Credit Bureau of Preston v. Sleight, 92 Idaho 210, 440 P.2d 143 (1968); In re Big River Grain, Inc., 718 F.2d 968 (9th Cir. 1983). See paragraph II.A.2.a. on page 3 for a discussion of “constructive notice.”

Some of the documents that legislature has authorized recorders to record without proper acknowledgement are:

- a. Patents and other title instruments recorded by the United States – Idaho Code § 55-803;
- b. Authenticated judgments - Idaho Code § 55-802;
- c. Notices of location - Idaho Code § 55-804;
- d. Notice of Lis Pendens - Idaho Code § 5-505;
- e. Mechanics liens - Idaho Code § 45-509;
- f. Master forms - Idaho Code § 45-1004;
- g. Cornerstones - Idaho Code § 55-1604;

3. “Documents not in English or translated”

Idaho Code § 73-121 provides that “any document required to be filed or recorded . . . shall be in the English language or shall be accompanied by a certified translation in English” (emphasis added). The code section is silent on the meaning of “certified.” Presumably, it is some type of oath by the translator as to the accuracy of the translation.

4. “Documents not statutorily entitled to be recorded”

Using rules of statutory construction, Idaho Code § 31-2402 can be read to be “exclusionary.” Unless specifically included in Idaho Code § 31-2402 (previously discussed), including “such other

writings as are required or permitted by law to be recorded” (previously discussed), a document is not eligible for recording. As previously discussed, “recording” is a statutory concept that did not exist at common law. Admittedly, some of the statutory classifications such as “affidavits affecting title to real property” (Idaho Code § 55-816) and “summaries of instruments affecting real property” (Idaho Code § 55-818) are very broad in their application and will require discretionary content review to determine whether they are properly recordable.

In a district court case in Kootenai County (Leroy J. Murray v. Taggart, Case No. CV-95-00642, filed 6/12/95), Judge Gary Haman ruled that the county recorder did have a certain degree of discretionary authority within the confines of Idaho Code §§ 31-2402 and 2410 to review the content of a document tendered for recording to determine if it was “authorized by law to be recorded” (Idaho Code § 31-2410). The Murray case involved documents entitled “Affidavit in Support of Claim of Lien” and “Notice of Claim of Lien” associated with a \$16,500,000 “common law lien” that Mr. Murray was claiming against some IRS employees. Judge Haman ruled that neither document was statutorily provided for and upheld the recorder’s refusal to accept the documents for recording. It is clear that the recorder’s liability for refusing to record under Idaho Code § 31-2417 is premised on the document being “proved or acknowledged according to law” and which “may by law be recorded.” Idaho Code § 45-1701 et seq., dealing with common law liens (above-discussed), requires statutory authority.

“Nonconsensual Common Law Liens” - The Idaho Attorney General’s Office sponsored original legislation and subsequent amendments in 2006 to aimed at protecting citizens and, specifically, state and local officials and employees from encumbrances by frivolous liens. Idaho Code § 45-1701 defines a nonconsensual common law lien and provides that such a lien is specifically not recordable or valid. A “nonconsensual common law lien” is a lien that:

- (a) Is not provided for by a specific state or federal statute;
- (b) Does not depend upon the consent of the owner of the property affected for its existence;
- (c) Is not a court-imposed equitable or constructive lien; and
- (d) Is not of a kind commonly utilized in legitimate commercial transactions.

The statutes provide for the recording of a notice of invalid lien by legal counsel representing state or local officials or employees who are liened by an improper common law lien that is recorded. There is also a court procedure for release of the lien. Idaho Code §45-1704 provides for civil penalties, including attorney's fees, against the lien claimant and any person who offers to have recorded or filed a lien which they know or have reason to know is false or invalid¹.

5. "Documents Outside the Chain of Title"

In Maxwell v. Twin Falls Canal Co., 49 Idaho 806, 292 P. 232 (1930), the Idaho Supreme Court ruled that the term "instrument" did not include a document executed by a "stranger to title." The phrase "stranger to title" means someone that is not part of the chain of title.

6. "Expungement"

The author was unable to find any statutory authority for the ability to expunge improperly recorded or filed documents from the public record.

D. Place of Recording

Idaho Code § 55-808 provides that instruments affecting real property must be recorded in the county recorder's office of the county where the affected real property is located. Idaho Code § 31-2402 does not deal with the location of the appropriate recorder's office, and presumably relies upon the allied statutory provisions associated with each specific subject matter (above-discussed). Recordable documents or instruments that do not specifically deal with real property are normally recordable in the county where the business is being conducted or a party to the document resides. Money judgments creating liens (Idaho Code §§ 31-2402(f) and 10-1110) can be recorded in any county and become a lien against any property owed by the judgment debtor in that county. That would also be true of "federal liens" under Idaho Code § 45-202.

E. Act of "Recording"

Idaho Code § 55-809 provides that an instrument affecting real property is "deemed to be recorded when, being duly acknowledged, or proved and certified, it is deposited in the recorder's office with the proper officer for record" (emphasis added). Idaho Code §§ 31-2402 and 2418 provide that the payment of fees is a prerequisite to a document being recorded (assuming that fees are required).

1. "Endorsement"

Idaho Code § 31-2410 provides that "when any instrument, paper or notice, authorized by law to be recorded, is deposited in the recorder's office, the recorder must endorse upon the same the time when it was received, noting the year, month, day, hour

and minute of its reception, and at once enter it in the proper index, or approved electronic storage and retrieval system and must record the same without delay” (emphasis added).

a. “Book and Page”

Idaho Code § 31-2411 requires the endorsement to include noting the book and page number on the instrument.

b. “Instrument Number”

Idaho Code § 31-2412 requires the placement of an instrument number on the deposited document as a general reception number.

c. “Return to Depositor”

Idaho Code § 31-2411 states that after endorsement, the deposited document “must thereafter be delivered upon request to the party leaving the same for record.” Presumably, this does not apply to documents in which the original is to be “filed” with the county recorder (above-discussed).

2. “Reception”

Idaho Code § 31-2413 requires the county recorder, immediately after endorsing a deposited document, to enter the endorsement information in a “reception book.” The code section describes the content of the book, and states that it is a public record open to inspection.

3. “Certification”

Idaho Code § 31-2414 requires the county recorder, once an instrument is numbered and entered in the reception book, to certify the number, date/time of depositing, and identity of “requester” on the recorded instrument.

4. “Indexing”

Idaho Code § 31-2414 suggests that “indexing” is part of the recording process, to wit:

When any instrument, paper or notice is numbered and entered in the reception book and indexed, it shall be recorded, as now provided by law

While it is the observation of the author that indexing physically occurs after return of the deposited document to the requester, the argument can be made that the document is not technically “recorded” until it is “indexed.” This would be consistent with the proposition that constructive notice does not occur until the document is indexed (Diamond Nat. Corp. v. Lee, 333 F.2d 517 (9th Cir., 1964)). Idaho Code

§ 31-2404 describes the twenty-seven different indexes that the county recorder must keep, to wit:

- a. "Grantors" and "Grantees" Indexes.
- b. "Mortgagors" and "Mortgagees" Indexes.
- c. "Release of Mortgages" Indexes.
- d. "Power of Attorney" Index.
- e. "Lessor" and "Lessee" Indexes.
- f. "Marriage Certificates" Indexes.
- g. "Assignments of Mortgages and Leases" Indexes.
- h. "Wills" Index.
- i. "Official Bonds" Index.
- j. "Mechanic's Lien" Index.
- k. "Transcripts of Judgment" Index.
- l. "Attachments" Index.
- m. "Notices of Actions" Index.
- n. "Separate Property of Married Women" Index.
- o. "Possessory Claims" Index.
- p. "Homesteads" Index.
- q. "Real Property Agreements" Index (described as including agreements and bonds affecting the title of real property).
- r. "Mining Claims" Index.
- s. "Water Rights" Index.
- t. "Financing Statements" Index.
- u. "General" Index (described as "all papers to be entered as they are filed").

5. In addition, Idaho Code § 31-2405 provides instructions for indexing deeds made by persons in their "official capacity," such as sheriffs, collectors, administrators and trustees.

Idaho Code § 31-2409 provides that the recorder may keep any two or more indexes in the same "volume," as long as the indexes are kept "distinct" from one another and the volume is marked with the contents. Idaho Code § 31-2409 also provides that the name of the parties in the first column in every index must be kept alphabetical. In the case of Reilly v. Board of Commissioners of Latah County, 29 Idaho 212, 158 P. 322 (1916), the Idaho Supreme Court ruled that the county recorder did not have to maintain a "tract index." It should be

noted that other miscellaneous code sections providing for recording also provide for indexing. For example, Idaho Code § 31-2406 requires an index for "Certificates of Sale," and Idaho Code § 45-703 requires the recorder to maintain an index of hospital liens. It is permissible for the indexes to be maintained on an electronic system that allows for search and retrieval of documents rather than in book form. "Recording Fees" - Idaho Code § 31-3205 sets forth the fees that the county recorder is allowed to receive for his or her services from the party procuring the services. As previously discussed, payment of the fee by the requester is a prerequisite to "recording." However, not all permissible fees are specifically described in this code section. For those services not specifically enumerated, the recorder may charge the "fee fixed by statute requiring the service" or the "same fee allowed the clerk of the district court for a like service":

a. "Fee set by statute":

(1) "Master Forms"

Idaho Code § 45-1004(5) provides that master forms are to be treated as "conveyances" in determining the amount of the recording fee.

(2) "Records of Survey"

Idaho Code § 55-1909 sets the filing fee at \$5.00 per page.

b. "Clerk of Court Fees" - Idaho Code § 31-3201.

c. "Recordings in which no fee can be charged:"

(1) "State Lands list"

Idaho Code § 31-3206 states that "clear lists" of lands granted to the state by the United States shall be recorded without a fee.

(2) "Military Discharge Papers"

Idaho Code § 65-301 provides that military discharge papers shall be recorded without a fee. Idaho Code § 65-302 provides that this free service can be requested by an official of the Veterans Administration, the claimant, his or her guardian, personal representative, dependent or attorney.

(3) "State or county as a party"

While Idaho Code § 31-3212 would appear to waive fees for matters in which the state or county is a party, in the case of State ex rel. Rich v. Larson, 84 Idaho 529, 374 P.2d 484 (1962), the Idaho Supreme Court ruled that the exemption in Idaho Code § 31-3212 did not apply to fees charged under Idaho Code § 31-3205, and required the state to pay for recording right-of-way acquisitions. However, in

Garrett v. Kline, 87 Idaho 456, 394 P.2d 157 (1964), the Idaho Supreme Court granted the exemption to the Director of the Idaho Department of Labor and Commerce who was seeking to record employment security law liens (discussed above). The distinction appears to be that the employment law liens were associated with an “action or proceeding” in which the state is a party.

F. Inspection - Idaho Code § 31-2419 provides that:

. . . all books of record, maps, charts, surveys and other papers on file in the recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

Oddly enough, this fairly demanding statutory duty has been rarely litigated. In Adams County Abstract Co. v. Fisk, 117 Idaho 513, 788 P.2d 1336 (Ct. App., 1990), the Idaho Court of Appeals ruled that this did not allow a title company to physically handle the recorded documents and to photocopy them in the courthouse.

G. Criminal Actions

1. “Offering false or forged instrument for record”

Idaho Code § 18-3203 makes it a felony to knowingly offer a false or forged instrument to be filed or recorded, which, if genuine, might be filed or recorded under any law of this state. (One might want to speculate if a \$16,500,000 “common law lien” against various IRS employees is a “false instrument.”)

2. “False entries in books of record”

Idaho Code § 18-3602 states that any person “who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return . . . is guilty of forgery.”

III. “FILING”

While the authors have pointed out in the introductory portion of this manual that there is historically a definitional distinction between “recording” and “filing,” the author would readily admit that the definitional distinction loses its relevance as the Idaho Legislature randomly passed recording statutes over the last 100 years. In many ways, the terms “recording,” “filing,” and “filing for the record” have become synonymous. Idaho Code § 31-3205 does state as follows:

All instruments delivered to the county recorder for record shall be recorded rather than filed with the exception of plats, surveys, cornerstone markers and instruments under the Uniform Commercial Code.

(Emphasis added.)

The authors would agree with the legislature that UCC filings under Idaho Code § 28-9-105 and the other mentioned documents are original documents that are not returned to the requester. However, there are additional documents that the Idaho Code indicates shall be filed with the recorder:

A. Bond Issues

Idaho Code § 57-301 provides that the county treasurer shall file with the county recorder a list of “all bonds” issued by political subdivisions of the state. The term “bond” is referring to a revenue bond and not a performance or surety bond. The code section goes on to specify the information that the list must include.

B. Agricultural Commodity Lien Extensions

Idaho Code § 45-1804 provides that an agricultural commodity lien created under Idaho Code § 45-1802, which lasts for only 180 days, can be extended for a period of one (1) year by “filing” a claim of lien with the recorder of the county where the purchaser of the agricultural commodity maintains its headquarters or main place of business in Idaho.

C. Appointments of Deputies and Subordinates

Idaho Code § 31-2007 states that the appointment of deputies and subordinate officers in county government must be documented and filed in the office of the county recorder.

IV. MISCELLANEOUS DUTIES OF THE RECORDER

Review of the Idaho Code reveals that the county recorder has some duties in addition to the act of either “recording” or “filing” instruments and documents that are statutorily eligible for such service. The following is a discussion of those additional duties.

A. Marriage Licenses

Idaho Code § 32-401 states that the county recorder “shall have authority to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to contract matrimony.” The code section goes on to describe the form of the

license. As previously discussed, the recorder also records all returns of the license in a book kept for that purpose.

1. "Those Entitled to Marry"

Idaho Code § 32-403 speaks to the application for the issuance of a license. The code section requires the recorder to have "personal knowledge" of the competency of the parties, or to accept an affidavit in writing from the applicants or other qualified parties. If one of the applicants is under the age of 18, the recorder may not issue the license unless the proof of age requirements are met.

a. "Persons who may marry"

Idaho Code § 32-202 describes the persons who may marry:

(1) "Any unmarried male or female of 18 years or older, not otherwise disqualified."

(2) "Provided, however, that parties under the age of 18, and not less than 16" need a parent's or guardian's consent in writing.

They must also submit a satisfactory copy of their birth certificate. If either is under the age of 16, written consent of the parent or guardian plus a court order is required.

(3) "First Cousins"

Idaho Code § 32-206 prohibits marriages between first cousins.

(4) "Incestuous Marriages"

Idaho Code § 32-205 provides that "incestuous marriages" ("parents with children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews"), are void from the beginning.

(5) "Polygamous marriages"

Idaho Code § 32-207 says that they are "void and illegal." Presumably, a license should not be issued. A proposed marriage is "polygamous" if one of the proposed parties to the marriage is still legally married. A former spouse who has been absent for five years may be presumed to be dead for purposes of the proposed new marriage.

2. "Fees"

Idaho Code § 32-408 provides that the fee for issuing a marriage license is set forth in Idaho Code § 31-3205. The fee includes taking the affidavit, issuing the license and recording the return.

3. “Educational pamphlet on AIDS”

Idaho Code § 32-412A provides that before issuing a marriage license, the recorder shall provide a confidential AIDS pamphlet prepared by the Idaho Department of Health and Welfare. The applicants must certify to the recorder that they have read the pamphlet. There is also a confidential questionnaire.

B. Oaths and Acknowledgments

Idaho Code § 31-2011 provides that “every county officer may administer and certify oaths.” To the extent that the clerk of the district court is the “recorder,” the recorder is entitled to administer oaths. Idaho Code § 55-702 provides that the recorder can make proofs and acknowledgments. It should be noted that Idaho Code § 31-3213 prohibits charging for oaths associated with “pension papers” for veterans with an honorable discharge who served in wars or conflicts authorized by the United States. The county recorder also witnesses the oaths of office for elected county officials (Idaho Code § 59-404).

C. Financial Statements on Bonds

Idaho Code § 57-302 requires the recorder to file a financial statement with the county commissioners, summarizing the outstanding bonds of the county and associated districts, and the total extent of the bond redemption fund.

D. Forced Plats

As previously discussed, Idaho Code §§ 63-210 and 50-1314 can require the recorder to be involved in the making of “forced plats.”

V. SUMMARY AND CONCLUSIONS

The statutory duties of the “county recorder” are indeed diverse and evolving. Since they are directly dependent upon the actions of the Idaho Legislature, they can change on an annual basis. The goal of this manual is to attempt to report on the current status of those duties and obligations as of December 31, 2006. To the extent that such duties are the subject of litigation, both county recorders and their legal advisors need to review and follow the decisions of the Idaho judicial system. To date, those decisions have not been numerous. In light of the new “sovereignty” and “constitutional” movements, one might assume that future judicial interpretation may be required. The authors want to thank and congratulate the 44 county recorders in Idaho and their staffs for doing a good job of capturing the “history” of Idaho’s “public record” in a retrievable manner.

Questions and Answers

ELECTRONIC RECORDS:

Question 1: Can I record electronically signed documents?

Answer: Yes. Pursuant to the uniform Electronic Transactions Act, Idaho Code §§ 28-50-111 et seq. you may accept and record electronically signed documents.

Question 2: What is appropriate procedure for situations in which an individual has brought in a digital camera or scanner to “copy” records? We charge \$1.00 per copy, but the number of “copies” made is difficult to track in such scenarios. Should such methods of “copying” even be allowed?

Answer: Adams County Abstract Co. v. Fisk, noted in the analysis for Idaho Code §31-2419, held that the recorder’s interest in performing his duty of protecting the safety of the documents in his care outweighs the interest of individuals to avoid fees. As such, the recorder “cannot be compelled to allow private photocopying of public records.” Further, the public’s right to know the contents of recorded documents does not necessarily extend to physical handling of the documents. Such methods of copying should not be allowed if they jeopardize the safety of the documents or the orderly functioning of the recorder’s office. A standard office procedure for tracking the number of such “copies” made by should be implemented.

Question 3: What are the allowable fees and procedure for electronic records and copies where no tangible item is transacted. For example a record kept electronically is requested via e-mail and the request is filled via an attachment to e-mail?

Answer: Idaho Code § 31-3205(2) states that a fee shall be negotiated between the county recorder and the purchaser of records “for duplication of recorded documents in excess of one hundred (100) pages or continuous copy requests for duplication of records using compact disc, zip disc, floppy disc, or other electronic means. Presumably, requests filled via e-mail fall within the category of “other electronic means. Although the law is mute as to the allowed charges for electronic data that is copied at less than one hundred (100) pages, it is appropriate to consider whether the purchaser makes continuous requests and the cost to the recorder’s office in fulfilling such requests when determining whether a fee is appropriate.

MULTIPLE RECORDS:

Question 4: When instruments such as Substitution of Trustee and Deed of Reconveyance are combined in one document, should we charge \$6.00 and index it twice?

Answer: Idaho Code § 31-2402 states that the recorder must “record separately” the instruments listed in that section. Included in the list are “Deeds” and “Such other writings as are required or permitted by law to be recorded.” Therefore, yes, such a document should be recorded twice and that there would be a separate charge for each recording.

Question 5: When documents are stapled together, such as a Substitution of Trustee and Deed of Reconveyance, do we separate and record?

Answer: Yes. See the answer to question 4, above.

TO RECORD, OR NOT TO RECORD:

Question 6: What are some reasons for why recording of a document would be refused?

Answer: This question is discussed at length on pages (this will change depending on the outcome of the manual revision) of this manual. Additionally, the following list provides you with a handy reference of some of the common reasons of why a document would not be recorded:

1. Attempting to record the document in the incorrect county;
2. The document is not an original or a certified copy of the original (when permitted under Idaho Code §31-2402);
3. The document does not contain a notary seal (Idaho Code § 55-805);
4. Proper fees have not been remitted with the document (Idaho Code § 31-2418);
5. Grantees address was not included in real estate conveyance (Idaho Code § 55-601)
6. Document is not acknowledged properly (Idaho Code §§ 55-805); and

This provides a working list for quick reference and is not intended to be exhaustive. Other reasons may exist, which may disqualify a document from recording. If you have questions regarding a specific document or situation you should consult with your county prosecutor before refusing to record the document, (Idaho Code § 31-2402(2)).

Question 7: Which UCC documents does the county record and which does the state record?

Answer: Idaho Code § 31-2402 states that county recorders must record “financing statements under the uniform commercial code which cover timber to be cut, minerals or the like (including oil and gas), pursuant to section 28-9-301, Idaho Code, or fixtures.”

Idaho Code § 28-9-501 states:

28-9-501. FILING OFFICE. (a) Except as otherwise provided in subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

1. The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut;

or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or to become fixtures; or

2. The office of the secretary of state or any office duly authorized by the secretary of state, in all other cases, including a case in which the collateral is goods that are or to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement, which is or is to become a fixture.

Question 8: Do I have to record every document that is presented to me for recording?

Answer: No. Murray v. Taggart instructs that county recorders have a duty to exercise discretion within the confines of Idaho Code §§ 31-2402 & 2410 to review the content, with the assistance of the county

prosecutor, of a document tendered for recording to determine if it is "entitled by law to be recorded."

Question 9: Are there any documents that by law cannot be recorded?

Answer: Yes. Idaho Code § 45-1701 was enacted by a series of legislation defined to protect state employees and other individuals from false or invalid liens filed against their property. The statute defines non-consensual law liens and provides that such liens may not be recorded. Idaho Code §45-1704 imposes penalties, including legal fees, on any individual who records an invalid claim of lien.

- nonconsensual liens: Liens that are:

1. not provided for by a specific state or federal statute;
2. do not depend upon consent of the owner of the property affected for its existence;
3. is not a court-imposed equitable or constructive lien; and
4. is not a kind commonly utilized in legitimate commercial transactions.

Question 10: A homeowners association wants to place a lien against someone. Do I have to record it?

Answer: Yes. Idaho Code § 45-810 provides that homeowners associations may place liens against a lot within their jurisdiction for one (1) year (a one (1) year extension is permissible). Certain requirements exist however, on determining whether or not a purported homeowners association is legally recognized as such. It is recommended that you refer to the afore mentioned statute for clarification as to which groups qualify as homeowners associations and for further specifics as to the steps of said group placing a lien on a lot against whose owner they have a claim.

Question 11: Should I record DD-214's?

Answer: Yes. Idaho Code § 65-301 provides that military discharge papers shall be recorded without a fee. Idaho Code § 65-302 provides that this free service can be requested by an official of the veterans administration, the claimant, his or her guardian, personal representative, dependant or attorney. Additionally, veterans may record redacted versions of their DD-214's with the following being redacted:

1. Date of birth
2. Social security number
3. blood type
4. home addresses
5. other personal identifying information

However, the veteran's name may not be redacted for the version of discharge papers to be recorded.

Lastly, there are some privacy provisions for DD-214 information that is recorded that are provided for in the open records laws of the Idaho Code. If you have a question regarding the confidentiality of such records simply refer to the open records law manual or to Idaho Code § 09-340C.

PROTOCOL FOR RECORD COPYING AND MAINTENANCE:

Question 12: What size should recording be by law?

Answer: Idaho Code § 31-3205 states that each page to be recorded should be no wider than 8 1/2 inches and no longer than 14 inches ("legal" size). For maps, sketches, drawings, and other items larger than legal size, with the exception of plats, the Recorder is to charge an additional 2¢ per square inch. Documents must be type-written or in legible handwriting.

Question 13: If John Smith, a married man, is Grantor on a Deed of Trust, and there is also a signature and notary for Jane Smith, is Jane Smith to be indexed also? What if Jane Smith signs, but the signature is not included in the notary?

Answer: Idaho Code § 31-2404 governs indexing:

INDEXES TO BE KEPT: Every recorder must keep and index of deed, grants and transfers, labeled "Grantors," each page divided into four (4) columns, headed respectively, "names of grantors," "names of grantees," "date of deeds, grants or transfers," and "where recorded."

In order to provide constructive notice of the Deed of Trust, it is necessary to index the document under the names of both grantors.

Idaho Code §55-805 requires that instruments transferring an interest in real property be properly acknowledged before recording. If Jane Smith's signature is not included in the notary, then the document has not been properly acknowledged and recording is not appropriate.

DEFINITIONS AND EXPLANATIONS OF TERMS:

Question 14: What is a facsimile signature?

Answer: A facsimile signature is a signature that is a reproduction of the original rather than hand written (for example: a signature applied by a rubber stamp or via fax machine). Idaho Code § 59-1019 states: "Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature..." Please see this entire section for detailed information regarding facsimile signatures.

Question 15: What is a reconveyance?

Answer: A reconveyance is restoration or return of something to its former holder. The most common form of reconveyance encountered by county recorders involves transferring back a property interest to the property owner after a mortgage loan has been paid in full or refinanced. A title insurer or title agent may reconvey (convey back to a previous owner) a trust deed pursuant to the procedure prescribed in section 45-1203, Idaho Code, if the obligation secured by the trust deed shall have been fully paid.

PROTOCOL FOR RECORD COPYING AND MAINTENANCE

Question 16: What is the protocol for a document that has been altered or changed from the original recorded document and requested to be re-recorded? Are the Recorders responsible to check and compare the two documents to see if there have been changes?

Answer: No, there is nothing in the Idaho Code that imposes on the Recorders the duty to compare records and determine if changes have been made. As long as the document is eligible for recording, it should be recorded. The duty to compare records and look for changes falls on anyone to whom the recording gives constructive notice. When conducting a search of the record, anyone interested in the documents should conduct a thorough search and investigate to determine what changes have been made.

Question 17: Many attorneys send, or have their clients deliver, and request us to record a certified copy of Decree of Divorce that does not have the legal description (only an address). We explain that it probably will not put the land in their names and that we would need the legal description included in the document or they have to execute a deed.

However, we do not refuse to record because the document meets the requirements for recording. Is this correct protocol?

Answer: Yes, the correct protocol is to record the Decree of Divorce. §55-801 Idaho Code instructs recorders that they may record any instrument or judgment affecting the title to or possession of real property. Recorders are not required to make legal decisions such as whether or not a document will be sufficient to convey an interest in land. However, §55-601 defines a conveyance of real property as a written instrument that contains the name of the grantee and his complete mailing address. It would appear that the Decree of Divorce satisfies this standard. The recorder is correct in recording the document, and the effect on the ownership of the interest in the subject property is a matter to be settled by and between the parties involved.